

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4764 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NAGABHAI CHATURBHAI VAGHARI

Versus

STATE OF GUJARAT

Appearance:

MR KR RAVAL for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/06/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner
has challenged the order of detention dated 3-1-2000
passed by the District Magistrate, Ahmedabad.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression 'public order'. A distinction has to be drawn between the 'law and order' and 'maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the actual date of detention and date of verification is same i.e. 3-1-2000. It is submitted that four criminal cases have been registered against the detenu. It is further submitted that the detenu has sent a representation on 27-4-2000 to the concerned authority and vide paras 5 and 6, detenu has demanded specific documents which have not been supplied to him by the authority in connection with Crime Register No.10 of 1998 and 65 of 1998 respectively. Though the representation has been received by the authority, the concerned authority has not taken any care even in taking the decision as expeditiously as possible and to communicate to detenu and ultimately, after a lapse of two months, on 6-6-2000 he has sent the documents admittedly after filing the present petition. Learned APP for the State, Mr.S.J.Dave has fairly admitted the same. It appears that there is a delay in supplying the documents to the detenu.

4. Hence, in view of the facts and circumstances and also in view of the judgment reported in AIR 1991 S.C. 2261 in the case of Ibrahim Shareef M. Madhafushi Vs. Union of India and Ors. more particularly point (6) of para 12, the order of detention is illegal. Point (6) of para 12 reads as under:

"In case where detenu is released on bail and is at liberty at the time of passing the order of detention, the detaining authority has to necessarily rely upon them as that would be a

vital ground for ordering detention. In such a case, the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu."

It has been held in a judgment reported in 1982 S.C. 696 in the case of Mohd. Zakir Vs. Delhi Administration and Ors. at head note as under:

"Detention-Documents relied on by authorities not supplied with grounds of detention-Detention is illegal."

It has been further held by the Apex Court as under:

"It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

Here in this case, though it is the duty of the authority to supply copies of the documents along with the detention order, authority has failed to supply the same. Even the detenu has requested by way of representation to supply the same, still copies of the same were not supplied. Since the petitioner succeeds from only point, learned advocate for the petitioner does not press all the other contentions.

4. In view of the above, the petition is allowed. The impugned order of detention dated 3-1-2000 passed by the District Magistrate, Ahmedabad against the detenu is hereby quashed and set aside. The detenu-Nagabhai Chaturbhai Vaghari is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA, J.)

RADHAN/